

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 02-568-A
)	
JAMES R. NIBLOCK,)	
)	
Defendant.)	

STATEMENT OF FACTS

The United States and the defendant, James R. Niblock, agree that, had this matter proceeded to a verdict, the United States would have proven the following facts beyond a reasonable doubt:

1. During September 1999 through June 2002, defendant James Niblock, age fifty-two, was a resident of Vienna, Virginia, which is in the Eastern District of Virginia.

2. From in or about September 1999, up to and including June 2002, in the Eastern District of Virginia and elsewhere, defendant James Niblock, and others, doing business as America's Mortgage, LLC, First National Title and Escrow (hereinafter referred to as First National), Pacific Guarantee Mortgage, and Advantage Investor's Mortgage (hereinafter referred to as Advantage) knowingly and willfully devised a scheme and artifice to defraud and obtain money and property by material false or fraudulent pretenses, representations, and promises.

3. On or about May 12, 2002, in the Eastern District of Virginia, defendant James Niblock, for the purpose of executing

the scheme to defraud, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce a writing, sign, signal and sound (in the form of a wire transfer of loan proceeds in the amount of \$175,963) from Bankers Trust/Deutsche Bank, New York, New York to Chevy Chase Bank, Bethesda, Maryland.

4. On or about May 30, 2002, in the Eastern District of Virginia, defendant James Niblock, for the purpose of executing the scheme to defraud, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce a writing, sign, signal and sound (in the form of a wire transfer of loan proceeds in the amount of \$392,089) from Household Bank, Prospect Heights, Illinois, to Chevy Chase Bank, Bethesda, Maryland.

5. On or about June 5, 2002, in the Eastern District of Virginia, defendant James Niblock, for the purpose of executing the scheme to defraud, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce a writing, sign, signal and sound (in the form of a wire transfer of loan proceeds in the amount of \$1,688,854) from Virtual Bank, Palm Beach Gardens, Florida to Chevy Chase Bank, Bethesda, Maryland.

6. On or about June 6, 2002, in the Eastern District of Virginia, defendant James Niblock, for the purpose of executing the scheme to defraud, knowingly transmitted and caused to be

transmitted by means of wire communication in interstate commerce a writing, sign, signal and sound (in the form of a wire transfer of loan proceeds in the amount of \$245,468) from Washington Mutual Bank, Houston, Texas, to Chevy Chase Bank, Bethesda, Maryland.

7. On or about June 12, 2002, in the Eastern District of Virginia, defendant James Niblock, for the purpose of executing the scheme to defraud, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce a writing, sign, signal and sound (in the form of a wire transfer of loan proceeds in the amount of \$224,264) from Household Bank, Prospect Heights, Illinois to Chevy Chase Bank, Bethesda, Maryland.

8. Defendant James Niblock was the owner of America's Mortgage, which he controlled and operated at 1760 Reston Parkway, in Reston, Virginia. America's Mortgage was in the business of originating or producing mortgage loans that were funded by lending institutions.

9. On February 12, 2001, defendant James Niblock negotiated, and caused to be negotiated, a branch operating agreement with the corporate office of Advantage Investor's Mortgage to operate a branch office in Reston, Virginia. Defendant Niblock controlled and operated the branch office which offered the loan products of Advantage.

10. To conceal his involvement, defendant James Niblock caused the signature of a relative with the initials "ERJ" to be placed on the branch operating agreement between Advantage and "ERJ".

11. Americas Mortgage and the Advantage branch generated potential customers with mass mailings and telemarketing.

12. A number of lenders funded loans originated by the Advantage office of Reston, Virginia, America's Mortgage, and Pacific Guarantee Mortgage, including Advantage Investors Mortgage Corp., Access Lending Corp., Decision One (aka Household Bank), GMAC Bank, Ohio Savings Bank, Residential Funding Corporation, Washington Mutual Bank (aka North American Mortgage Company), and Virtual Bank of Florida. These lenders received the false and fraudulent documents, including Settlement Statements, that are described in this Statement of Facts.

13. Defendant Niblock was the owner of First National which he controlled and operated at 1760 Reston Parkway in Reston, Virginia. First National was the company used for escrow and settlement services for the loans brokered and originated by Advantage, America's Mortgage, and Pacific Guarantee Mortgage.

14. Defendant Niblock attempted to conceal his ownership and control of First National with the use of "ERJ" and an individual with the initials "RCS" as nominee owners. Employees of First National were instructed to say that defendant James Niblock was not associated with First National.

15. On September 17, 1999, defendant Niblock caused the signature stamp of "ERJ" to be placed on the 1999 annual report of First National filed with the Commonwealth of Virginia, and caused "ERJ" to be listed as the president of First National.

16. On February 9, 2000, defendant Niblock caused the signature stamp of "ERJ" to be placed on the 2000 annual report of First National filed with the Commonwealth of Virginia, and caused "ERJ" to be listed as the president of First National.

17. On or about June 17, 2002, defendant Niblock informed "ERJ" to respond to any questions about First National by stating that he sold it to "RCS". At the direction of defendant Niblock, "ERJ" informed agents from the Virginia Bureau of Insurance that he had sold First National to "RCS".

18. In June 2002 defendant James Niblock caused a 2002 annual report of First National to be filed with the Commonwealth of Virginia that removed the name of "ERJ" as the president of First National and caused "RCS" to be listed as the president of First National.

19. Defendant James Niblock opened and controlled bank accounts for America's Mortgage and First National. Defendant Niblock had the control and discretion to transfer money from the escrow account and the discretion to issue, or not issue, checks from the escrow account.

20. First National received settlement instructions that provided for the fees and any other amounts to be paid to Advantage, Pacific Guarantee Mortgage, or First National.

21. In order to protect their loans, the lending institutions would loan money on the condition that borrowers sign notes and deeds of trust (also referred to as mortgages) on the properties securing the loans. The lending institutions required that when a loan closed, all outstanding loans secured by deeds of trust on the property--including all prior mortgages--be paid in full, so that the lending institution's new loan would be secured by a first deed of trust, rather than a second or third deed of trust.

22. First National would receive the loan proceeds by wire transfer to its escrow account (number 178-43044-6) at Chevy Chase Bank in Bethesda, Maryland. The escrow account was supposed to serve as a temporary repository for funds First National held for the benefit of the lenders and borrowers. These loan proceeds were to be used, in part, to pay in full prior mortgages on the property or other prior obligations of the borrower.

23. Part of First National's and defendant James Niblock's duties were to prepare a Settlement Statement with an accurate, honest, and prompt accounting for and disposition of funds attendant to the settlement.

24. First National and defendant James Niblock were responsible for disbursing funds in accordance with the Settlement Statement, known as a "HUD-1", and the settlement instructions provided by the lenders.

25. At the direction of defendant James Niblock, a First National employee would prepare and sign a Settlement Statement. On each Settlement Statement, a First National employee would certify, under penalty of perjury, that the entries on the form were a "true and accurate account" of the transaction, and that the funds were, or would be, disbursed in accordance with the Settlement Statement.

26. First National would provide copies of the Settlement Statement to each participant in every settlement in which it served as a settlement agent. The borrowers and lenders relied on the Settlement Statements, because the Settlement Statements purported to account for the disposition of all funds changing hands in the settlement.

27. To carry out his fraudulent scheme, defendant James R. Niblock, and others, created false and fraudulent real estate documents, including Settlement Statements, that did not accurately reflect the disbursement of real estate proceeds that First National held in escrow for the benefit of lenders and borrowers. The Settlement Statements falsely showed that the prior loans of the refinancing owners were paid in full.

28. First National did not pay off the loans of numerous borrowers as represented on the Settlement Statements, but used the loan proceeds for other purposes.

29. Defendant James Niblock instructed employees of First National to prepare false documents to support the fraudulent real estate documents.

30. After the borrowers signed the notes and deeds of trust, and First National failed to pay the balances of the prior deeds of trust, the borrowers were liable for two monthly mortgage payments and had two mortgages on their property.

31. Defendant James Niblock and First National had the following borrowers execute notes and deeds of trust. Defendant and First National then prepared false and misleading Settlement Statements representing that First National had paid the prior obligations of the borrowers. Defendant Niblock and First National provided the false and misleading Settlement Statements to the borrowers and the respective lenders. The lenders relied on these false Settlement statements in making the decisions to wire loan proceeds to First national

<u>Borrower</u>	<u>Lender</u>
Kenneth and Peggy Bigler 5339 Westfield Road Mequon, WI	GMAC Mortgage Corp.
Robert and Jacquelyn Duncanson 11505 22 nd Avenue South Burnsville, MN	Ohio Savings Bank
Jorge and Elisea Gamarci	VirtualBank

44 Summer Road
Greenwich, CT

Scott Gosline
2333 Lake Villas Court
Duluth, GA

Bobby Hansmann
9031 John Day Dr.
Gold Hill, OR

Sherman and Betty Harper
10000 Southeast 55th Street
Oklahoma City, OK

Bradley and Leslie Horne
2120 Pineview Circle
Dover, PA

Richard and Denise Landers
35453 Sourwood Place
Round Hill, VA

Rosalee Maddoloni
104 Middlebury Dr.
Warwick, PA

Christopher Miller
1653 NW 785th Street
Bates City, MO

Michael and Anne Overall
10553 Gorman Road
Laurel, MD

Barbara K. Olson
3312 43rd Avenue South
Minneapolis, MN

Glenn and Anna Olson
6485 Hokah Dr.
Lino Lakes, MN

Ronald Petron
62 Wynn Cove
Brighton, TN

Jennifer and Jody Quiggle

Advantage Investors Mortgage

Ohio Savings Bank

GMAC Mortgage Corp.

Ohio Savings Bank

Advantage Investors Mortgage

Ohio Savings Bank

Ohio Savings Bank

GMAC Mortgage Corp.

Washington Mutual Bank, FA

Ohio Savings Bank

Washington Mutual Bank, FA

Decision One Mortgage Co., LLC

14005 North 36th Street Way
Phoenix, AZ

Susan and George Satterlee
19901 North 69th Avenue
Glendale, AZ

Decision One Mortgage Co., LLC

Julia Shannon
18 Thistle Dr.
Balston Spa, NY

Decision One Mortgage Co., LLC

Phillip Vandenberg
111 Aspen Dr.
Downingtown, PA

Decision One Mortgage Co., LLC

Harvey and Marta Weaver
475 Lakeland Street
Grosse Pointe, MI

Advantage Investors Mortgage

Kenneth and Vickianne Weber
Vicki Anne Weber
2632 Pearson Parkway
Brooklyn Park, MN

Washington Mutual Bank, FA

32. Defendant James Niblock was responsible for signing the disbursement checks that were used to pay the prior obligations of the borrowers and to insure that the lenders had a first lien against the property of the borrower.

33. Chevy Chase Bank would send facsimiles to confirm the receipt of loan proceeds in the First National escrow account and the employees would inform defendant James Niblock of the receipt of loan proceeds.

34. First National employees would present defendant James Niblock with disbursement checks from the escrow account 178-43044-6 and a copy of the facsimile confirming the receipt of the wired loan proceeds. Because defendant Niblock knew the loan

proceeds had been disbursed for other improper purposes, he frequently refused to sign the disbursement checks.

35. Instead of maintaining the loan funds in the escrow account, defendant James Niblock would transfer the loan proceeds to other accounts under his control.

36. During the months of April 2002 through June 2002, defendant James Niblock transferred approximately \$1,384,000 from the escrow account to other accounts that he maintained and controlled.

37. First National and defendant James Niblock did not properly disburse the loan proceeds that were held in escrow, but used the proceeds for other purposes including the personal expenses of defendant James Niblock and the business expenses of America's Mortgage. During the months of May and June 2002, defendant Niblock transferred approximately \$294,000 from First National and America's Mortgage for his personal benefit

38. Because defendant Niblock used the settlement funds for other purposes, the disbursement checks frequently bounced and were returned for nonsufficient funds.

39. Defendant Niblock would make the disbursements for loan settlements late because he had already spent the funds and had to wait for "new loan money."

40. If defendant Niblock did sign disbursement checks which comported with the settlement instructions, he would sign the checks only for the complaining borrowers.

41. In some instances, the Settlement Statements reflected that the borrowers were due a payment which was referred to as a "cash out." To delay notice to the borrowers, defendant James Niblock would issue the "cash out" check to the borrowers.

42. Defendant James Niblock converted and diverted the "new loan proceeds," without any notice to the lenders, for purposes not allowed by the Settlement Statements or the settlement instructions, including his own personal purposes.

43. As a result of the misrepresentations and false statements, and as a result of the scheme and artifice to defraud, First National and defendant James Niblock received approximately \$9,358,303 which was not disbursed in accordance with the Settlement Statements.

44. Defendant James Niblock filed false loan applications and conducted false mortgage sales on his personally owned real estate located at 9900 Rosewood Hill Circle, Vienna, Virginia, 9356 Mildred Court, Vienna, Virginia, 9700 Days Farm Road, Vienna, Virginia, 9941 Lawyers Road, Vienna, Virginia, 7607 Rexford Road, Boca Raton, Florida, and 7721 Ballantrae Court, Boca Raton, Florida.

45. The loss for sentencing purposes under U.S.S.G. § 2B1.1 is in excess of \$7,000,000 but less than \$20,000,000.

46. The actions of defendant James Niblock, as recounted above, were in all respects intentional and deliberate, reflecting an intention to do something the law forbids, and were not in any way the product of any accident or mistake of law or fact.

47. The foregoing statement of facts is a summary of the principal facts that constitute the legal elements of the offense of wire fraud. This summary does not include all of the evidence that the government would present at trial or all of the relevant conduct that would be used to determine the defendant's sentence under the Sentencing Guidelines and Policy Statements.

Respectfully submitted,

PAUL J. McNULTY
UNITED STATES ATTORNEY

Dana J. Boente
Assistant United States Attorney

Charles F. Connolly
Assistant United States Attorney

48. After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to

trial, the United States would have proved the same beyond a reasonable doubt.

Date: _____

JAMES R. NIBLOCK
Defendant

49. I am James R. Niblock's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Date: _____

Michael E. Nachmanoff
Assistant Federal Public Defender
Counsel for Defendant

Ivan D. Davis
Assistant Federal Public Defender
Counsel for Defendant